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February 22, 1991

Ms. Carolyn Fiske Wright
Assistant Regional Counsel
New Jersey Superfund Branch
U.S. Environmental Protection Agency
Region II
Jacob K. Javits Federal Building
New York, New York 10278

Re: New Vernon Road/Tielmann Property

Dear Carolyn:

I have received your letter dated February 13, 1991 in which you enclosed a copy of the December 20, 1990 Agency for Toxic Substances and Disease Registry ("ATSDR") report (hereinafter the "ATSDR report" or the "report") on the New Vernon Road and White Bridge Road properties. I have forwarded your letter and attachments to Hans and Helena Tielmann for their review. We have also reviewed the Draft Final Report on the sampling at the property prepared by Alliance Technologies Corporation ("Alliance"). The purpose of this letter is to set forth an initial response to the ATSDR report.

I recognize that as counsel for the U.S. Environmental Protection Agency ("EPA") you are obligated to provide us with the ATSDR report and to assert positions which are consistent with, and based upon, the report's conclusions. I ask, however, that appropriate technical and policy making officials at the EPA review this matter concerning the continued designation of the property as constituting an imminent threat to human health and that this review be consistent with the standards, actions and positions taken by the EPA in other matters. In this regard, I have set forth below our response and comments to the ATSDR December 20, 1990 report.

I found the conclusions of the ATSDR report to be incredulous. I must admit that I was so amazed by its contents

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that I re-read the report numerous times. The analytical data belie the conclusions reached by the ATSDR. The continued designation of the New Vernon Road property (the "property") as "an imminent and substantial threat to human health" is incomprehensible.

The report is based in large part on the Public Health Addendum dated September 14, 1990. Indeed, the only additional references to the report that were not considered in the original addendum were References 9, 10 and 11 which included: a summer 1989 annual report on carcinogens, a telephone conference call, and an undated report prepared by the EPA's ERT contract. Subsequent to the September, 1990 addendum report, however, the Tielmanns' property was the subject of extensive interim removal actions and also underwent substantial site investigation for the presence of asbestos throughout the property by Alliance. While there is some reference in the December, 1990 report to the data generated as a result of the interim removal actions, the conclusions of the ATSDR report are woefully misleading in my opinion. Our position is based on the following facts.

First, the ATSDR report references the September 1990 sampling and merely states that "the levels detected were below quantification levels for the analytical methods used". The report's discussion of the site sampling performed in October 1990 is even more revealing. Air sampling prior to the interim removal actions revealed asbestos concentrations of 0.0003 fibers per cubic centimeter (f/cc). The OSHA standard for acceptable concentrations is 0.2 f/cc and the action level is 0.1 f/cc. The concentrations found in the Tielmanns' residence were therefore a magnitude lesser of the OSHA requirements by a factor of approximately 1,000th.

After the interim removal actions were completed, the concentration was found at 0.00019 f/cc. Again, this is approximately 1-1,000ths of OSHA's standard. It should also be noted that the Tielmanns' residence was tested by using an aggressive technique to determine worse case conditions, while the "control homes" were tested using a passive technique. In addition, the documentation I have available to me indicates that the concentrations found at the Tielmann residence are less than detectable limits for the asbestos testing performed.

ATSDR states that the presence of more than one nanogram of asbestos per cubic meter creates a health risk. Even given the fact that no data or standard is provided to support this fact, the average mass of asbestos found in the Tielmanns' residence both before and after implementation of the interim

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removal action was 0.837 nanograms and 0.53 nanograms per cubic meter, respectively.

I recognize that the OSHA standards are imposed for workers and are based on an 8 hour weighted average criteria. I recognize that the Tielmanns' home is a residence. To the extent that ATSDR considers the property as a "workplace", however, these OSHA standards are relevant. It is apparent, however, that the ATSDR considers the presence of any asbestos fibers to constitute a health risk. I intend to inquire as to the EPA's and the ATSDR's position in its investigations of other properties--residential, commercial, industrial, public or private. I find it difficult to believe that the ATSDR seriously asserts that the presence of any asbestos fibers in any building warrants a classification that that property represents an imminent and substantial threat to human health.

Second, the outdoor sampling performed to date has not identified quantifiable concentrations of asbestos fibers in the ambient air. The interim removal action performed to date has resulted in the removal of asbestos and the temporary and/or permanent encapsulation of areas containing asbestos. The Alliance report has delineated the remaining undeveloped areas on the property containing asbestos material, yet no information has been presented to document that any standards are being violated at the property. The Alliance report found air samples ranged from 0 to 0.004 f/cc, and results from personal sampling ranged from 0.004 to 0.063 f/cc.

The Tielmanns have, and will continue to, restrict access and/or activities of the areas known, or suspected to be, contaminated with asbestos in the Alliance report. There are no workers or customers physically on-site for at least 40 hours per week. No sampling activities are therefore required for such workers or customers and it is reiterated that the requirements for such workers or customers should be consistent with the standards imposed by OSHA which, as noted above, are approximately 1,000 times greater than the concentrations sampled at the property to date.

Third, the ATSDR makes it appear as though the interim removal action performed at the property did not result in any benefit to the Tielmanns, inasmuch as the ATSDR still concludes that the Tielmanns should "dissociate" themselves from the property. I therefore question what additional activities can be performed at the property which would enable the residence and surrounding property to be no longer classified as an imminent and substantial threat to public health and permit the Tielmanns to freely occupy and use the property which has been the subject

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of the interim removal action and which has been shown by extensive air sampling not to be in violation of any adopted EPA or OSHA standard.

It should be understood that we do not question the propriety, or need, to have performed the interim removal action completed to date, Alliance's site review, or the preparation of an ultimate record of decision (ROD) for the property. It is acknowledged and appreciated that the EPA has pursued the interim removal action and the studies necessary to delineate the extent of asbestos containing materials ("ACM") in the soils at the property. These activities are properly of concern and should be pursued to conclusion as expeditiously as possible. What is questioned is the ATSDR's continued insistence that the property not be occupied and that it continues to constitute an imminent and substantial health risk. If this is the case, I would strongly suggest that the scheduled completion of the ROD by the end of this year is far too long and this process should be expedited.

On the other hand, if the EPA or the ATSDR are relying on an existing standard for asbestos that substantiates the imminent and substantial health risk classification that the ATSDR continues to attach to this property, we would like to be advised of such a standard. No activities are being performed or are being undertaken at the property which would impact those areas identified as known or suspected to be contaminated with asbestos. The only areas being occupied or used by the Tielmanns and their workers are those areas of the property which do not contain asbestos, or which have been the subject of the interim removal action performed by the EPA, including the residence. Based upon the analytical data which is presently available concerning the property, including the data generated as a result of the completion of the interim removal action and the Alliance Draft Final Report data, all clearly suggest that the property residence and adjoining areas are in compliance with any and all OSHA and EPA standards. The ATSDR appears to be adhering to its position based upon the August, 1990 sampling which, even assuming its validity at that time, is no longer appropriate, representative or relevant. Again, no one disputes the need to vigorously pursue the permanent solution to the ACM in the soils.

The Tielmanns will continue their cooperation with the EPA in the completion of the ROD for the property. In the

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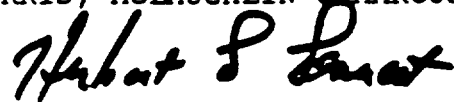
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meantime, we reiterate our request that the EPA review and reconsider its classification of the New Vernon Road property.

Very truly yours,

NORRIS, McLAUGHLIN & MARCUS



Herbert B. Bennett

HBB/pd

cc: Mr. and Mrs. Hans Tielmann

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